

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

12	TEDDY LEROY WILSON, Jr., CDCR)	Case No. 06cv2420-WQH (BLM)
13	#78443,)	
14	Plaintiff,)	ORDER DENYING MOTION
15	v.)	REQUESTING ASSISTANCE OF
16	ISMAEL BRIZYELA, et al.,)	COUNSEL
17	Defendants.)	
)	[Doc. No. 31]

On August 3, 2007, Plaintiff, who is proceeding *pro se* and *in forma pauperis* with a Second Amended Complaint brought pursuant to 42 U.S.C. § 1983, filed a motion requesting assistance of counsel.¹ Doc. No. 31. Plaintiff previously requested counsel in this case, but the district judge denied his request on July 10, 2007, finding that Plaintiff had failed to demonstrate the requisite "exceptional circumstances" to justify appointment of counsel. Doc. No. 22.

¹ Since Plaintiff did not specify under what authority he seeks counsel, the Court presumes Plaintiff relies upon 28 U.S.C. § 1915(e)(1). This section provides that "[t]he court may request an attorney to represent any person unable to afford counsel." 28 U.S.C. § 1915(e)(1).

1 As correctly explained in the district judge's July 10, 2007 order,
2 "[t]here is no constitutional right to appointed counsel in a § 1983
3 action." Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) (citing
4 Storseth v. Spellman, 654 F.2d 1349, 1353 (9th Cir. 1981)); see also
5 Hedges v. Resolution Trust Corp. (In re Hedges), 32 F.3d 1360, 1363 (9th
6 Cir. 1994) ("there is no absolute right to counsel in civil
7 proceedings"). Thus, federal courts do not have the authority "to make
8 coercive appointments of counsel." Mallard v. United States District
9 Court, 490 U.S. 296, 310 (1989); see also United States v. \$292,888.04
10 in U.S. Currency, 54 F.3d 564, 569 (9th Cir. 1995) ("Appointment of
11 counsel under [28 U.S.C. § 1915] is discretionary, not mandatory").

12 District courts have discretion, however, pursuant to 28 U.S.C. §
13 1915(e)(1), to "request" that an attorney represent indigent civil
14 litigants upon a showing of "exceptional circumstances." Agyeman v.
15 Corrections Corp. of America, 390 F.3d 1101, 1103 (9th Cir. 2004). "A
16 finding of the exceptional circumstances of the plaintiff seeking
17 assistance requires at least an evaluation of the likelihood of the
18 plaintiff's success on the merits and an evaluation of the plaintiff's
19 ability to articulate his claims 'in light of the complexity of the
20 legal issues involved.'" Id. at 1103 (quoting Wilborn v. Escalderon,
21 789 F.2d 1328, 1331 (9th Cir. 1986)).

22 In the instant request, Plaintiff explains that he requires counsel
23 to conduct legal research for him because the prison law library is
24 closed and no one has been able to tell him when it will reopen. Doc.
25 No. 31. Additionally, Plaintiff claims that his requests to have legal
26 materials brought to him have been denied. Id. Plaintiff believes
27 these circumstances demonstrate the requisite "exceptional
28 circumstances" to justify appointment of counsel. Id.

1 The Court disagrees. Plaintiff has not provided any evidence
2 showing that the law library has, in fact, been closed. Nor has he
3 offered any showing aside from the unsworn allegation in his motion that
4 the library has denied his requests to have legal materials delivered to
5 him. Indeed, in his concurrently filed "Motion Requesting Extension of
6 Time to Respond," Plaintiff admitted that the librarian told him that if
7 he sent a request naming specifically what he needed, she would
8 photocopy that material and mail it back to him. Doc. No. 29. This
9 belies Plaintiff's assertion that the library will not provide him with
10 legal materials. Accordingly, the Court concludes that Plaintiff has
11 failed to demonstrate that he has been denied access to legal materials
12 and that he, therefore, cannot articulate his claims. See Agyeman, 390
13 F.3d at 1103.

14 For the foregoing reasons, the Court find that Plaintiff has not
15 alleged the requisite "exceptional circumstances" and hereby **DENIES**
16 Plaintiff's Motion Requesting Assistance of Counsel [Doc. No. 31].

17 **IT IS SO ORDERED.**

18 DATED: August 9, 2007

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20 BARBARA L. MAJOR
21 United States Magistrate Judge

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24 COPY TO:

25 HONORABLE WILLIAM Q. HAYES
26 U.S. DISTRICT JUDGE

27 ALL COUNSEL
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